

SERVED: January 28, 2000

NTSB Order No. EA-4820

UNITED STATES OF AMERICA  
NATIONAL TRANSPORTATION SAFETY BOARD  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 27th day of January, 2000

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|------------------------------------|-----------------|
| _____ )                            |                 |
| JANE F. GARVEY, )                  |                 |
| Administrator, )                   |                 |
| Federal Aviation Administration, ) |                 |
| )                                  |                 |
| Complainant, )                     |                 |
| )                                  |                 |
| v. )                               | Docket SE-15795 |
| )                                  |                 |
| PAUL JAY RICHARDSON, )             |                 |
| )                                  |                 |
| Respondent. )                      |                 |
| )                                  |                 |
| _____ )                            |                 |

OPINION AND ORDER

The respondent has appealed from the oral initial decision Administrative Law Judge William E. Fowler, Jr., rendered in this proceeding on December 28, 1999, at the conclusion of an evidentiary hearing.<sup>1</sup> By that decision the law judge affirmed an emergency order of the Administrator revoking respondent's Airline Transport Pilot (ATP) Certificate (No. 1537786) on allegations that he had intentionally falsified the Falcon 10 aircraft type rating applications of seven airmen, in violation of section 61.59(1)(a) of

<sup>1</sup>An excerpt from the hearing transcript containing the initial decision is attached.

the Federal Aviation Regulations (FAR), 14 C.F.R. Part 61.<sup>2</sup> Because we conclude, for the reasons discussed below, that the facts do not support a finding that the regulation was violated, the appeal will be granted.

This is the fifth in a recent series of emergency falsification cases that have had as their common denominator an FAA-Designated Pilot Examiner (DPE) named James Carey who used the respondents in an apparent attempt to circumvent an FAA policy that forbade him from both training and flight testing applicants for type ratings. The other cases raised issues concerning the authority of the respondents to sign the instructor's endorsements on applications for Falcon jet type ratings submitted by students of Mr. Carey in connection with the flight checks he administered. In this case the respondent signed the instructor's endorsement on at least seven forms that had not yet been filled out by any student, with the understanding that Mr. Carey would not date the endorsements until such time as respondent had completed the students' training and had notified Carey that they were ready for a flight test. It appears, however, that Carey, without respondent's knowledge or consent, used the forms for students he had trained and flight-tested. Although the law judge found that Carey had "duped" respondent into signing the application forms in advance, he accepted the Administrator's argument that respondent's signature on the blank application forms was an intentional falsification. We do not agree.

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<sup>2</sup>FAR § 61.59(a)(1) provides as follows:

**§ 61.59 Falsification, reproduction, or alteration of applications, certificates, logbooks, reports, or records.**

(a) No person may make or cause to be made:

(1) Any fraudulent or intentionally false statement on any application for a certificate, rating, authorization, or

To succeed on a charge of intentional falsification, the Administrator must prove that a false statement was knowingly made in reference to a material fact.<sup>3</sup> Hart v. McLucas, 535 F.2d 516, 519 (9th Cir. 1976). Because the law judge found that respondent had been deceived by Carey, he obviously believed that respondent did not intend that his endorsement be placed on the applications of airmen he had not trained.<sup>4</sup> Absent proof on the element of scienter, it does not matter that respondent may have, as he now appreciates, exercised exceptionally poor judgment in creating the potential for his endorsements to be used fraudulently. The intentional falsification charge cannot stand without evidence that he knew of Carey's intent or that he was, despite his denials, a willing participant in Carey's apparent scheme to skirt a restriction on his authority as an FAA DPE.<sup>5</sup>

We are also of the opinion that the Administrator did not establish the element of falsity with respect to the respondent's

(..continued)

duplicate thereof, issued under this part....

<sup>3</sup>Falsity, knowledge, and materiality--the evidence must be sufficient to support each one of these elements of an intentional falsification.

<sup>4</sup>Although we have no occasion to reach the issue of materiality in this case, we note that for a statement to be material, it need only be capable of influencing the decision of the agency in making a required determination. Twomey v. NTSB, 821 F. 2d 63, 66 (1st Cir. 1987). For a discussion of the issue in another case involving DPE Carey, see Administrator v. Richards, NTSB Order EA-4813 (served January 13, 2000).

<sup>5</sup>The record contains no evidence that respondent knew beforehand of Carey's intentions or that he had any reason not to trust Carey, whom he had known socially and professionally for about twenty years.

undated signatures on the blank FAA Forms 8710-1.<sup>6</sup> We fully understand the Administrator's alarm over respondent's bad judgment in pre-signing instructor endorsements for airmen he had not even met, much less trained. At the same time, we do not agree that the clear inadvisability of such conduct has any present bearing on the resolution of this case, given the law judge's credibility assessment in respondent's favor. That the endorsements were rendered false by the DPE's subsequent misuse of the forms did not, in our judgment, make them false when signed.<sup>7</sup>

Without record support for either the elements of falsity or scienter, the law judge's decision and the Administrator's order must be reversed.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. The respondent's appeal is granted; and
2. The initial decision and the emergency order of revocation are reversed.

HALL, Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

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<sup>6</sup>The top of the second page of FAA Form 8710-1 contains a section entitled "Instructor's Recommendation." It states, "I have personally instructed the applicant and consider this person ready to take the test."

<sup>7</sup>We are not persuaded by the Administrator's argument that the endorsement must be deemed false even if no applicant is named. It seems to us that an endorsement that does not apply to a specific individual is no endorsement at all.